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JUL 18 2006

CENTRAL REEXAMINATION UNIT

In re Application of :
William H. Kump : ORDER TO
Application No. 09/379,051 : SHOW CAUSE
Filed: August 23, 1999 :

This is a show cause order based on the expiration of U.S. patent 5,660,946, while the present application requests reissue of that patent.

BACKGROUND

1. The present application was filed August 23, 1999, for reissue of U.S. patent 5,660,946 (the '946 patent) issued August 26, 1997.
2. The '946 patent expired for failure to pay the 7.5 year maintenance fee by Friday, August 26, 2005 (the end of the grace period). See 1299 *Official Gazette* 122, 127 (Oct 25, 2005).

ORDER TO SHOW CAUSE

As pointed out above, the present reissue proceeding is for reissue of the '946 patent, and that patent expired for failure to pay the 7.5 year maintenance fee by Friday, August 26, 2005. On October 25, 2005, a Notice of the expiration of the '946 patent was published in the *Official Gazette*. Since the '946 patent has expired for failure to pay the first maintenance fee, the Director of the USPTO no longer has the authority under 35 U.S.C. § 251 to reissue the '946 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only "for the unexpired part of the term of the original patent." Thus, when *Morgan's* original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority because there no longer was an unexpired term of the patent for which *Morgan's* patent could be reissued. *Morgan's* appeal thus became moot."
[990 F.2d at 1231, 26 USPQ2d at 1393; Emphasis added]

Because the Director no longer has the authority under 35 U.S.C. § 251 to reissue the patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the application for reissue of the '946 patent to be an abandoned application.

Applicant is hereby being provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.

If applicant proposes to show cause why the present reissue proceeding should not be terminated, applicant's showing must include an explanation of why the proceeding should continue in spite of the expiration of the original patent.

If applicant makes a showing, the showing will be evaluated as to whether it provides sufficient reasons why the present reissue proceeding should not be terminated. A failure to present any reasons for not vacating the reissue proceeding within the 30 day period will result in the proceeding being terminated by default. If the present reissue proceeding is terminated, the application for reissue of the '946 patent will be returned to Technology Center 1700 for processing as an abandoned application.

CONCLUSION

1. Applicant is being provided with a period of 30 DAYS from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.
2. Failure by applicant to present any reasons for not terminating the present reissue proceeding within the 30 day period will result in termination of the proceeding by default, followed by a mailing of a Notice of Abandonment in the application for reissue of the '946 patent.
3. Telephone inquiries related to this decision should be directed to Pinchus Laufer, Legal Advisor, at (571) 272-7726 or, in his absence to Christine Skane Tierney, Special Program Examiner, Technology Center 1700, at (571) 272-1055.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

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July 13, 2006

7-17-06

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